

AO 241 (Rev. 09/17)

8:23cv464

U.S. DISTRICT COURT
DISTRICT OF NEBRASKAPETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

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|---|--|--|
| United States District Court | | District: Nebraska |
| Name (under which you were convicted): Nico Wofford | | Office of the Clerk Docket or Case No.: CR-15-2581 |
| Place of Confinement: Tecumseh Correctional Institution | Prisoner No.: 84696 | |
| Petitioner (include the name under which you were convicted): Nico Wofford | Respondent (authorized person having custody of petitioner) v. Craig Gable, TSCI Warden Rob Jeffrys, NDCS Director | |
| The Attorney General of the State of: The state of Nebraska | | |

PETITION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:

Dagals County Courthouse, Omaha Nebraska

- (b) Criminal docket or case number (if you know):

CR-15-2581

2. (a) Date of the judgment of conviction (if you know):

7-22-16

- (b) Date of sentencing:

10-13-16

3. Length of sentence: 40-60 years

4. In this case, were you convicted on more than one count or of more than one crime?
- ☒
- Yes
- ☐
- No

5. Identify all crimes of which you were convicted and sentenced in this case:

Use of A Weapon to
Commit a Felony and Discharging a Firearm at an Occupied dwelling

6. (a) What was your plea? (Check one)

☒ (1) Not guilty ☐ (3) Nolo contendere (no contest)
☐ (2) Guilty ☐ (4) Insanity plea

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(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? N/A

(c) If you went to trial, what kind of trial did you have? (Check one)

☒ Jury ☐ Judge only

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

☐ Yes ☒ No

8. Did you appeal from the judgment of conviction?

☒ Yes ☐ No

9. If you did appeal, answer the following:

(a) Name of court: Nebraska Appellate Court

(b) Docket or case number (if you know): 5-16-1004

(c) Result: Affirmed

(d) Date of result (if you know): Dec. 15, 2017

(e) Citation to the case (if you know): State v. Wofford, 298 Neb. 412 (2017)

(f) Grounds raised: sustained the motion to Consolidate his trial. Unsupervised
Jury access to view the surveillance video during deliberations, Insufficient
evidence, Excessive sentences.

(g) Did you seek further review by a higher state court? ☐ Yes ☒ No

If yes, answer the following:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Result: _____

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(4) Date of result (if you know): _____

(5) Citation to the case (if you know): _____

(6) Grounds raised: _____

(h) Did you file a petition for certiorari in the United States Supreme Court?

☐ Yes☒ No

If yes, answer the following:

(1) Docket or case number (if you know): _____

(2) Result: _____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court? ☒ Yes ☐ No

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court: Douglas County District Court
 (2) Docket or case number (if you know): CR-15-2581
 (3) Date of filing (if you know): Around December 18, 2018
 (4) Nature of the proceeding: State Postconviction Motion
 (5) Grounds raised: Invalid Jury Instructions, Ineffective Assistance of Trial Counsel, Judicial Abuse of Discretion Inadequate Jury Instruction

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes☒ No(7) Result: Conviction Affirmed

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(8) Date of result (if you know): _____

(b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: Douglas County District Court(2) Docket or case number (if you know): CR-15-2581(3) Date of filing (if you know): 4-27-23(4) Nature of the proceeding: Second/successive verified Postconviction Motion(5) Grounds raised: Prosecutorial Misconduct: The state committed misconduct when Lafferrell T. Matthews at the trial for the defendant gave false testimony at trial on the record, when he was asked if he received leniency in exchange for his testimony.

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☒ No

(7) Result: _____

(8) Date of result (if you know): _____

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court: N/A

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

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(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☒ No

(7) Result: _____

(8) Date of result (if you know): _____

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

- (1) First petition: ☐ Yes ☒ No *did it prose; did not know*
- (2) Second petition: ☒ Yes ☐ No
- (3) Third petition: ☐ Yes ☐ No

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

On my first petition I was self-represented, did not know that I needed to appeal or even that I could appeal.

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE:

Violated my Due Process By Consolidating my trial with my Co-defendant

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The court violated my Constitutional Right. By Consolidating my trial with my co-dependent trial which is against my due process.

(b) If you did not exhaust your state remedies on Ground One, explain why:

Grand was exhausted

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(c) **Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

☒ Yes☐ No

(2) If you did not raise this issue in your direct appeal, explain why:

N/A(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes☒ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

N/A

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know):

N/A

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

N/A

(3) Did you receive a hearing on your motion or petition?

N/A☐ Yes☐ No

(4) Did you appeal from the denial of your motion or petition?

N/A☐ Yes☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

N/A☐ Yes☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

N/A

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know):

N/A

Date of the court's decision:

N/A

Result (attach a copy of the court's opinion or order, if available):

N/A

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

Issue raised to Neb. supreme court.

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(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: N/A

GROUND TWO:

Batson challenge overruled Contra Batson v Kentucky

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

During jury selection the state struck the only African American male due to his religious beliefs. The state also struck the only hispanic woman due to where she lived (south atlanta). she also got struck because a relative ^{was} killed in a different case not related to mine. The constitution states that I should be tried by a jury of my peers. I think I should had a mix jury not an all white jury.

(b) If you did not exhaust your state remedies on Ground Two, explain why: Ground was exhausted

(c) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?



Yes

☐ No

(2) If you did not raise this issue in your direct appeal, explain why:

N/A

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes

☒ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

N/A

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know):

N/A

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Date of the court's decision:

N/A

Result (attach a copy of the court's opinion or order, if available):

N/A

(3) Did you receive a hearing on your motion or petition?

N/A☐ Yes☐ No

(4) Did you appeal from the denial of your motion or petition?

N/A☐ Yes☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

N/A☐ Yes☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

N/A

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know):

N/A

Date of the court's decision:

N/A

Result (attach a copy of the court's opinion or order, if available):

N/A

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

Issue raised to Neb. Supreme Court

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two:

N/A**GROUND THREE:**Jury Instruction's violation of due process and fair trial

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The court allowed the jury to go against the jury instruction. Number 4 and number 5. Number 4 stated that the jury was not to do their own investigation, research ect. Number 5 states that the jury is not to take any electronics cell phones, laptops, tablets ect. And both of these instructions was abandoned and my due process was violated and deprived me of a fair trial.

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(b) If you did not exhaust your state remedies on Ground Three, explain why:

Ground was exhausted(c) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?



Yes

☐ No

(2) If you did not raise this issue in your direct appeal, explain why:

N/A(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes

No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

N/A

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know):

N/A

Date of the court's decision:

N/A

Result (attach a copy of the court's opinion or order, if available):

N/A

(3) Did you receive a hearing on your motion or petition?

N/A☐ Yes☐ No

(4) Did you appeal from the denial of your motion or petition?

N/A☐ Yes☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

N/A☐ Yes☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

N/A

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know):

N/A

Date of the court's decision:

N/A

Result (attach a copy of the court's opinion or order, if available):

N/A

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(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

Issue raised to Neb. Supreme Court.(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three: N/A**GROUND FOUR:** Insufficient Evidence in Violation of due Process and Fair Trial,

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Wofford generally contends that the state's evidence was not sufficient to prove a prima facie case for the charges against him. He argues that the testimony of the state's witnesses was not corroborated by any physical evidence such as DNA testing or fingerprinting that would identify Wofford as the person who fired the shots. He further argues that none of the occupants of the vehicle into which the shots were fired identified him as the shooter, that no weapon was found in his possession, and that there was no gunpowder residue to connect him to the shooting. Wofford further contends that the testimony of his codefendants, Matthews and Hairston, was "so self-serving and so extremely doubtful in character."

(b) If you did not exhaust your state remedies on Ground Four, explain why:

Ground was exhausted(c) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?



Yes



No

(2) If you did not raise this issue in your direct appeal, explain why:

N/A(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes

No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

N/A

see Attached

Grand Juror: continues

the lacked probative value to support his convictions.

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Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know):

N/A

Date of the court's decision:

N/A

Result (attach a copy of the court's opinion or order, if available):

N/A

(3) Did you receive a hearing on your motion or petition? N/A

☐ Yes☐ No

(4) Did you appeal from the denial of your motion or petition? N/A

☐ Yes☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? N/A

☐ Yes☐ No

(6) If your answer to Question (d)(4) is "Yes," state: N/A

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know):

N/A

Date of the court's decision:

N/A

Result (attach a copy of the court's opinion or order, if available):

N/A

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

Issue raised to Neb. Supreme Court.

- (e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four:

N/A

See Attached

Ground Five: Prosecutorial misconduct in violation of the Fifth, Sixth and Fourteenth Amendments to the U.S. Constitution.

(A) Supporting Facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The state committed prosecutorial misconduct by allowing my Code defendant Lafferrrell Matthews to give false testimony at my trial when he was asked if he received any leniency in exchange for his testimony and he said he did not.

See Attached

Ground Five: Continues

(B) IF you did not exhaust your state remedies on Ground Five explain why: Ground Five was raised to the district court and an appeal was filed but ruled time barred.

(C) Direct Appeal of Ground Five:

(1) IF you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☒ No

(2) IF you did ~~not~~ raise this issue in your direct appeal, explain why: The Court of Appeals on its own motion decided that my appeal was not submitted on time.

(D) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?
☒ Yes ☐ No

(2) IF your answer to question (D)(1) is "yes," state:
Type of motion or petition: 2nd Postconviction

Name and location of the court where the motion or petition was filed: Douglas County District Court

Docket or case number (if you know): CR15-2581

Date of the court's decision: April 27, 2023

Result (attach a copy of the court's opinion or order, if available): Denied without an evidentiary hearing.

(3) Did you receive a hearing on your motion or petition?

☐ Yes ☒ No

(4) Did you appeal from the denial of your motion or petition?

☒ Yes ☐ No

(5) IF your answer to question ^(D) (4) is "yes," did you raise this issue in the appeal? ☐ Yes ☒ No

(6) IF your answer to question (D) (4) is "yes," state:
Type of Motion or Petition: N/A

Name and location of the court where the appeal was filed:
Nebraska Supreme/Appeals Court

Docket or case number (if you know): A-23-0419

Date of court's decision: September 12, 2023

Result (attach a copy of the court's opinion or order, if available): Appellant's petition for further review denied.

(7) IF your answer to question (D)(4) or question (D)(5) is "No," explain why you did not raise this issue: The court did not allow me to file a brief. The Court decided that I had filed my notice of appeal untimely.

other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Five: Consequently to the Court's decision I filed a pro se petition for further review which the Court ~~ultimately~~ denied.
ultimately

See Attached

Grand Six: Video Footage / laptop was allowed and viewed during jury deliberations in violation of due process.

(A) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.)

The jury was instructed not to use any electronics cellphones, laptop's, tablet's, ect.. during the deliberations. The Juror's had access to a laptop and a Juror was a computer technician and found a software to tamper and manipulate the evidence.

Petitioner assert that reliance of the created evidence by the jury rendered the trial unfair. The Juror's actions robbed petitioner of an acquittal.

See Attached

Ground Six Continues

(B) If you did not exhaust your state remedies on Ground Six explain why: Ground six was raised to district court but not appealed to highest court.

(C) Direct Appeal of Ground Six:

(1) If you appealed from the Judgment of Conviction, did you raise this issue? ☒ yes ☒ NO

(2) If you did not raise this issue in your direct appeal, explain why: I did not appeal because I did not know that I could.

(D) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction Motion or petition for habeas Corpus in a state trial court?
☒ yes ☐ NO

(2) If your answer to question (D)(1) is "yes," state:
type of Motion or petition: 1st Postconviction

Name and location of the court where the Motion or petition was filed: Douglas County District Court

Docket or case number (if you know): CR15-2581

Date of the Court's decision: March 7th, 2019

Result (attach a copy of the court's opinion or order, if available): Denied

(3) Did you receive a hearing on your motion or petition?
☐ yes ☒ No

(4) Did you appeal from the denial of your motion or petition?
☐ yes ☒ No

(5) If your answers to question (1)(4) is "yes" did you raise this issue in the appeal? ☐ yes ☒ No

(6) If your answer to question (1)(4) is "yes," state:
Type of Motion or Petition: N/A

Name and location of the court where the appeal was filed:
N/A

Docket or case number (if you know): N/A

Date of court's decision: N/A

Result (attach a copy of the court's opinion or order if available): N/A

(A) IF you answer to Question (D)(4) or Question (D)(5) is "No," explain why you did not raise this issue:

I filed a pro se postconviction not knowing what I was doing or how to do it. In Nebraska pro se litigants are expected to perform as an attorney would, pro se litigants are not given attorneys to assist them with their postconviction.

Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, ect.) that you have used to exhaust your state remedies on Grand Seven:

See Attached

grounds: Arresting officers failed to read the defendant's his Miranda rights at the time of his arrest.

(A) Supporting Facts (Do not argue or cite law. Just the specific facts that support your claim.)

This Miranda issue should have been raised in my direct appeal. Failure to do so constitute Ineffective Assistance of Appellate Counsel - So I'm asking the court to excuse my default due to ineffective of appeal counsel.

In Nebraska we are not entitled to postconviction attorney during a postconviction. I did my postconviction prose did not know the procedure but the Miranda issue has merit. So I'm asking the court to excuse its procedural default.

See Attached

Ground seven: Continues

(B) IF you did not exhaust your state remedies on Ground seven explain why: Ground seven raised to district court but appealed to highest court

(C) Direct Appeal of Ground seven:

(1) IF you appealed from the judgment of conviction, did you raise this issue ☐ yes ☒ No

(2) IF you did not raise this issue in your direct appeal, explain why: I did not appeal because I did not know that I could

(D) Post-Conviction proceedings:

(1) Did you raise this issue through a post conviction motion or petition for habeas corpus in a state trial court?

☒ yes ☐ No

(2) IF your answer to question (D)(1) is "yes" state:

Type of motion or petition: 1st Postconviction

Name and location of the court where the motion or petition was filed: Douglas County District Court

Docket or case number (if you know): CR15-2581

Date of the court's decision: March 7th, 2019

Result (Attach a copy of the court's opinion or order, if available): Denied

(3) Did you receive a hearing on your motion or petition?
☐ Yes ☒ No

(4) Did you appeal from the denial of your motion or petition? ☐ Yes ☒ No

(5) If your answer to question (D)(4) is "yes" did you raise this issue in the appeal? ☐ yes ☒ No

(6) If your answer to question (D)(4) is "yes," state type of motion or petition: N/A

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of court's decision: N/A

Result (Attach a copy of the court's opinion or order, if available): N/A

(7) IF your answer to question (D)(4) or question (D)(5) is "No," explain why you did not raise this issue:

I filed a prose postconviction not knowing what I was doing or how to do it. In Nebraska prose litigates are expected to perform as an attorney would, prose litigants are not given attorneys to assist them with their post conviction.

Other Remedies: Describe any other procedures (such habeas corpus administrative remedies, etc.) that you have used to exhaust your state remedies on Ground six:

see Attached

grounds: Judicial and ^{prosecution} ~~prosecution~~ Violation of Brady material

(A) Supporting facts (Do not argue or cite law. Just the specific facts that support your claim.)

The Defendant has wrote the courts, Police station, Prosecutor's office, trial counsel, appellate counsel and records with the Freedom of Information Act etc, Discovery Motions. To provide Police Reports, Depositions, witness testimony and witness Plea Agreements. which would helped the Defendant's with better knowledge and arguments to strengthen his Postconviction.

In Nebraska we are not entitled to Postconviction attorney during a Postconviction. I did my Postconviction prose did not know Procedure but the Failure to provide the defendant with all legal documents issue has Merit. so I'm asking the Court to excuse its Procedural default.

See Attached

around eight; continues

(B) IF you did not exhaust your state remedies on Ground Eight explain why: Ground seven was raised to district court but not appealed to highest court;

(C) Direct Appeal of Ground Eight;

(1) IF you appealed from the judgment of conviction, did you raise this issue? ☐ yes ☒ No

(2) IF you did not raise this issue in your direct appeal, explain why: I did not appeal because I did not know I could

(D) Post-conviction Proceedings:

(1) Did you raise this issue through a Post-conviction Motion or Petition for Habeas Corpus in a state trial court?
☒ yes ☐ No

(2) IF your answer to question (D)(1) is "yes" State:
Type of Motion or Petition: 1st Post Conviction

Name and Location of the Court where the Motion or Petition was filed: Douglas County District Court

Docket or Case number (if you know): CR15-2581

Date of the court's decision: March 7th 2019

Result (attach a copy of the court's opinion or order if available): Denied

(3) Did you receive a hearing on your Motion or Petition?
☐ Yes ☒ No

(4) Did you appeal from the denial of your Motion or Petition?
☐ Yes ☒ No

(5) If your answer to question (D)(4) is "yes" did you raise this issue in the appeal? ☐ Yes ☒ No

(6) If your answer to question (D)(4) is "yes," state type of Motion or Petition: N/A

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of court's decision: N/A

Result (attached a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (D)(4) or Question (D)(5) is "No," explain why you did not raise this issue

I filed a prose postconviction not knowing what I was doing or how to do it. In Nebraska prose litigates are expected to perform as an attorney would. Prose litigates are not given attorneys to assist them with their postconviction.

Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground eight: ~~N/A~~

See Attached

Grand Nine: Ineffective Assistance of Appellate Counsel in violation of the Sixth Amendment.

(A) Supporting Facts (Do not argue or cite law. Just the specific facts that support your claim.)

Appellate counsel failed to raise ineffective assistance of trial counsel due to: (1) failure to conduct investigation; (2) failed to explain to the Defendant the advantage and disadvantage of signing a written arrangement and/or waiver of physical appearance therefore allowed the Defendant to "forefeit his preliminary hearing" (3) waiver of petitioner's rights to Constitutional and statutory speedy trial and (4) failure to file a motion to suppress statements/evidence.

This ground was raised in my pro se postconviction motion but when the court denied my motion I failed to appeal to the highest court in the state. However, this issues were in the record and appellate counsel failed to raise them. Therefore, I am asking the court to excuse any procedural default due to ineffective assistance of appellate counsel.

see Attached

Ground Nine: Continues

(B) IF you did not exhaust your state remedies on ground nine explain why: Ground nine was raised to district court but not appealed to highest court

(C) Direct Appeal of Ground Nine:

(1) IF you appealed from the judgment of conviction, did you raise this issue? ☒ yes ☒ no

(2) IF you did not raise this issue in your direct appeal, explain why: I did not appeal because I did not know I could.

(D) Post conviction proceedings:

(1) Did you raise this issue through a post conviction motion or petition for habeas corpus in a state trial court? ☒ yes ☐ no

(2) IF your answer to question (D1) is "yes," state: type of motion or petition: 1st Postconviction

Name and location of the court where the motion or petition was filed: Douglas ^{County} District Court

Docket or case number (if you know): CR15-2581

Date of the court's decision: March 27th 2019

Result (attach a copy of the court's opinion or order, if available): Denied

(3) Did you receive a hearing on your motion or petition? ☒ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition? ☐ Yes ☒ No

(5) If your answer to question (D)(4) is "yes" did raise this issue the appeal? ☒ Yes ☐ No

(6) If your answer to question (D)(4) is "yes," state type of Motion or Petition: N/A

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

IF your answer to Question (D)(4) or Question (D)(5) is "No," explain why you did not raise this issue.

I filed a pro se post conviction not knowing what I was doing or how to do it. In Nebraska pro se litigants are expected to perform as an attorney would litigate. We are not given attorneys to assist them with their post conviction

other Remedies: Describe any other procedures (such as habeas Corpus, administrative remedies, etc.) that you have used to exhaust your state Remedies on Ground NMC N/A

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13. Please answer these additional questions about the petition you are filing:

- (a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? ☐ Yes ☒ No

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them:

- Grounds Five, Six, Seven, Eight and Nine were no presented to the Nebraska Supreme Court. Ground Five was appealed to the Neb Ct. of Appeals but the Court ultimately ruled that my appeal had been filed untimely. The rest of the grounds I did not file and did not know that I could appeal.*
- (b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

N/A

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? ☐ Yes ☒ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available.

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? ☐ Yes ☒ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

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16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: waived appearance

(b) At arraignment and plea: Jim McGough/McGough Law P.C.L.L.C. 11920 Burt Street Suite 100 PO Box 540186 Omaha, NE 68154

(c) At trial: Jim McGough/McGough Law P.C.L.L.C. 11920 Burt Street Suite 100 PO Box 540186 Omaha, NE 68154

(d) At sentencing: Jim McGough/McGough Law P.C.L.L.C. 11920 Burt Street Suite 100 PO Box 540186 Omaha, NE 68154

(e) On appeal: Ernest H. Addison JR. (ERNEST H. ADDISON JR. ATTORNEY AT LAW 6842 PACIFIC Street OMAHA, Nebraska 68106)

(f) In any post-conviction proceeding: Pro Se

(g) On appeal from any ruling against you in a post-conviction proceeding: Pro Se

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? ☐ Yes ☒ No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed:

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? ☐ Yes ☐ No

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.*

Your Honor since I was convicted and sentenced I have been trying to get all of my document/discovery/Brady materials from all of my attorneys, the Douglas County District Attorney and the Courts. This all have been documented.

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Your Honor, I further filed a Freedom of information request and even tried to get my paperwork by filing State public of information requests? Nothing worked.

Your Honor, to this day I have put every application in court including Three Postconvictions solely based on mind/memory recollection of what took place during my pretrial, trial, sentencing and appeal proceedings.

Your Honor, to this day ^{Oct.} Wednesday, 10th 2023, I have not received any of my discovery, bill of exceptions or transcripts.

Your Honor, I further request that you have mercy on me and that you grant me equitable tolling and further deem my habeas application timely filed as any time barred is not for lack of trying to get relief but a State created impediment.

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of -
 - (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
 - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
 - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
 - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

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- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Therefore, petitioner asks that the Court grant the following relief:

discovery, appointment of counsel, leave to Amend Habeas Corpus, evidentiary hearing, violation of my Constitutional rights and release from custody
or any other relief to which petitioner may be entitled.

Signature of Attorney (if any)

Pro Se

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on 10-18-23 (month, date, year).

Executed (signed) on 10-18-23 (date).

[Signature]
Signature of Petitioner

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition.

H/A

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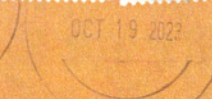
Nico Waffard # 84656
Po Box 500
Tecumseh Ne 68450

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